DOCKET NO.: MSFT-0097/141553.01
Application No.: 09/417,739
Office Action Dated: March 25, 2005

PATENT
REPLY FILED UNDER EXPEDITED
PROCEDURE PURSUANT TO
37 CFR § 1.116

REMARKS

Claims 7-9, 16, and 37-43 are pending in this application, all of which stand finally rejected. In particular, As a result of the March 25, 2005 Office Action, claims 7-9, 16, and 37-43 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Bryant[1] in view of U.S. Patent No. 6,606,657 (Zilberstein). Additionally, the Examiner has also rejected claims 42-43 under section 103(a) as being unpatentable over Bryant in view of Zilberstein and in further view of Bryant, et al.[2] For the reasons set forth below, applicants respectfully disagree with the grounds for rejection and request reconsideration of the March 25, 2005 Office Action/Final Rejection.

Paragraphs 1-3 of the present Office Action appear to be substantively identical to the rejection set forth in the prior (October 20, 2004) Office Action. In summary, applicants argued that:

1. The applied prior art describes measuring the time that a user spends at a given web site, rather than the time between two requests as claimed. (See claims 9, 38, and 39.) These are two different quantities of time, and the former does not teach or suggest the latter.

2. The applied prior art does not teach or suggest recording a second client request as a function of a response to a first client request – specifically, where the record takes into account the relative location of hyperlinks on a web page. (See claims 8 and 37.)

3. The applied prior art, and its applied alleged teaching of "including a URL timer to determine the amount of time a user spends at each web page in a timely and efficient manner" has nothing to do with the features actually recited in claims 7 and 16, and thus these claims define over the applied prior art.

Applicants have set forth these arguments in detail in the January 10, 2005 paper, and need not repeat those arguments here.

However, in paragraph 4 of the Office Action, the Examiner appears to address some of the arguments raised by applicants, and applicants address those arguments as follows:

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[1] There are three Bryant patents listed in the Notice of References cited, and the Examiner has not stated which one is being applied. It appears, based on prior office actions, that the Examiner uses "Bryant" to refer to U.S. Patent No. 6,286,046.

2 In the present office action, the Examiner uses the label "Bryant, et al." to refer to U.S. Patent No. 6,078,956. We will use the label "Bryant" when referring to the 046 patent, and "Bryant, et al." when referring to the 956 patent, in order to distinguish these two patents.

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First, the Examiner asserts that Zilberstein teaches measuring the time between two requests. This assertion is incorrect. As to this point, the Examiner has reasoned as follows:

> Zilberstein discloses a system and method for processing and presenting Internet usage information that monitors actual time that a user spends on a website and calculates the difference between the time the user spent on the web page before he/she switch to another URL within the current page being viewed. *Therefore*, Zilberstein teaches measuring the time between two requests.

[March 25, 2005 Office Action, pp. 11-12 (emphasis added).] Applicants do not agree with the Examiner's characterization of Zilberstein. Specifically, the phrase "difference between the time the user spent on the web page before he/she switch to another URL" is not from Zilberstein, and does not describe any quantity of time discussed in Zilberstein. However, even if this characterization of Zilberstein were correct, applicants dispute the conclusion drawn from this characterization. Applicants have italicized the word "therefore" in order to highlight the turning point at which the logic in the Examiner's argument breaks down, since this appears to be the primary disagreement on this point. Even if Zilberstein can be said to teach measuring the time that a user spends on a web page, this fact would not imply that Zilberstein teaches measuring the time between two requests. The time that a user spends on a web page is a different quantity from the time between two requests.

It should be noted that the Examiner has never addressed the fact that the quantity of time measured in Zilberstein, and the quantity of time measured in claim 9, 38, and 39, are different. The Examiner asserts the last office action provides "a convincing line of reasoning as to why the artisan would have found the claimed invention to be obvious in light of the teachings of the cited references." (Office Action, p. 11.) In fact, the Examiner has never argued that measuring the time between two requests is obvious in view of Zilberstein's asserted teaching of measuring the time that a user spends on a web page. Rather, the Examiner has argued that Zilberstein actually teaches measuring the time between two requests, and has relied on this teaching. (See the present Office Action, p. 7, where the Examiner's addresses claim 9.)

If the grounds for rejection are now that Zilberstein does not actually teach measuring the time between two requests, then it should be noted that this would be an entirely new position that the Examiner has never taken up to this point. If the Examiner wishes to change

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the argument to this new position, then applicants request that the Examiner withdraw the finality of this Office Action and set forth this position in a non-final Office Action so that applicants can have the ability to respond to such new ground of rejection.

Second, in response to applicants argument concerning claims 8 and 37, the Examiner asserts that Zilberstein "also teaches wherein a request as [sic] a function of the relative location of hyperlinks on a web page (col. 3, lines 21-32)." The following is the text from the cited portion of Zilberstein:

> Preferably, when a user enters a new web page or site, the are automatically provided information about other users accessing the same web page or site.
>
> According to a further aspect of the invention, a user can communicate with one or more other users accessing the same site at the same time, even if the ID of those users is not known in advance. In one technique, a user can initiate a real-time chat with other site visitors. Prospective chat targets can be identified by querying the central server. Preferably, before a query is processed, the user is required to enter additional information, such as areas of interest ....

The quoted portion of Zilberstein – which relates to communication between users accessing the same web site, and "real-time chat" – has nothing to do with a "function of the relative location of hyperlinks on a web page." Thus, this newly cited portion does not address the feature for which it is cited. In view of this fact, applicants request that the Examiner reconsider the rejection of claims 8 and 37 and withdraw the rejection.

Finally, in response to applicants' prior argument on claims 7 and 16, the Examiner has responds as follows:

> Zilberstein is used to modify Bryant, by allowing Bryant's monitor to record a client's request that is a function of the response, which is taught by Zilberstein (col. 3, lines 21-32).

[Office Action, p. 12.] The cited portion of Zilberstein (which is the same portion quoted above) has nothing to do with a request being a function of a response. Thus, this citation to a new portion of Zilberstein does not address the actual features recited in claims 7 and 16. In particular, claims 7 and 16 call for a record of a request to be a function of a response to a different request. These features are not taught in Zilberstein or Bryant. No portion of Zilberstein or Bryant cited – or any other that applicants have been able to located – teaches such features.

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Finally, applicants note that the Examiner's reference to 37 C.F.R. § 1.111(b) is inapposite. In the January 10, 2005 paper, applicants set forth in significant detail why the claims differ from the applied prior art. Applicants' response included quotations from the prior art, quotations from the claims, and an explanation of how the claims differ from the prior art as applied. This is precisely the type of response that section 1.111 envisions. Applicants note that the Examiner has not held the January 10, 2005 paper to be non-responsive. Further applicants note that January 10, 2005 paper contains a full and complete response to each ground of rejection, as does the present paper.

For all of the foregoing reasons, applicants request that the Examiner reconsider and withdraw the Office Action/Final Rejection, and issue a Notice of Allowance for the pending claims in this case.

Date: April 27, 2005

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